

**MINUTES OF THE MILLVILLE
TOWN COUNCIL MEETING
May 9, 2017 @ 7:00 p.m.**

In attendance were Mayor Bob Gordon; Deputy Mayor Steve Maneri; Treasurer Susan Brewer; Council Member Peter Michel; Town Solicitor Seth Thompson; Town Manager Debbie Botchie; and Town Clerk Matt Amerling. Secretary Valerie Faden was absent.

1. CALL MEETING TO ORDER

Mayor Bob Gordon called the meeting to order at 7:02 p.m.

2. ROLL CALL

Mayor Gordon stated everyone was present except for Secretary Valerie Faden, thus there is a quorum.

3. PLEDGE OF ALLEGIANCE TO THE FLAG

4. ADOPTION OF TOWN COUNCIL MINUTES AND NOTES

- A. Adoption of Town Council Executive Session Minutes – March 28, 2017
- B. Adoption of Town Council Minutes – April 11, 2017
- C. Adoption of Town Council Workshop Minutes – April 25, 2017

Deputy Mayor Steve Maneri stated he had one minor change to the April 11, 2017, Town Council minutes, on page three (3), five (5) lines up from the bottom, the word “compete” should be “complete.” Council Member Susan Brewer motioned to adopt the Executive Session minutes from the March 28, 2017, Town Council Workshop meeting, the April 11, 2017, Town Council meeting, and the April 25, 2017, Town Council Workshop meeting with the correction to the April 11, 2017, minutes on page three (3), five (5) lines up from the bottom, as pointed out by Mr. Maneri. Mr. Maneri seconded the motion. Motion carried 4-0.

5. FINANCIAL REPORT – Treasurer Susan Brewer

A. April 2017

Council Member Susan Brewer read the Financial Report for the month ending 4/30/17.

April 30, 2017:

General Revenue:	\$ 45,233.	Restricted Revenue:	\$ 99,986.
General Expenses:	60,466.	Restricted Expenses:	60,402.

Town Solicitor Seth Thompson stated the financials do not need to be approved by Council and simply read into the minutes.

6. ADMINISTRATIVE MATTERS

A. Administrative Report for April 2017 – Town Manager

Town Manager Debbie Botchie stated at the end of this past fiscal year, the Town's expenditures were only at sixty-three percent (63%), so the Town has stayed under budget, and the Town's revenue was at one-hundred-forty-four percent (144%).

7. CITIZENS' PRIVILEGE, VISITORS, PRESENTATIONS & APPOINTMENTS

There were no comments.

8. NEW BUSINESS

- A.** Discuss and possible vote on a proposal from George, Miles & Buhr, LLC (GMB), for the "Architectural & Engineering for New Construction of the Community Center and Maintenance Building as well as Construction Administration for the Town of Millville Community Park" – Mayor Gordon and Deputy Mayor Maneri.

Mayor Bob Gordon stated GMB was responsible to handle the building of the new addition to the Town Hall, so Deputy Mayor Maneri and Mayor Gordon asked GMB to possibly bid or give the Town a proposal on doing the same work toward the park building and the bathhouse as what was done for the addition. Mayor Gordon stated Council was going to discuss this matter at the April 25 Workshop meeting but Mayor Gordon and Mr. Maneri had some concerns, so they worked with Drew Lyons, of GMB, to iron out some of the wording and find out what concerns there were for both parties. Mayor Gordon asked Town Solicitor Seth Thompson if, per the Town's Charter, it is not necessary for the Town to bid for engineering fees. Mr. Thompson stated yes, per section fourteen (14) of the Town's Charter, there are a number of types of contracts which are exempt from the competitive bidding requirement, so while the Town could competitively bid for the engineering fees if it so chooses, the Town is not required to do so. Mr. Thompson stated number two (2) under that list is the purchase or contract for personal or professional services, and professional services in the past has always meant something which required specialized training or degree, and certainly an engineer would fall within that category. Mr. Thompson stated the Town's term isn't defined in the Town's Charter but if you look in Title twenty-nine (29) of the Delaware Code, the State's procurement process defines "professional services" and gives a nonexclusive list of items which fall within that, and engineering is included, as well as construction management. Mr. Thompson stated, based on the Town's Charter and the common definition for "professional services," this proposal tonight is exempt from competitive bidding.

Mr. Maneri asked, regarding the contract, with the RPR (Resident Project Representative) on page three (3), if there is a way to prevent what happened with the Town Hall building annex in terms of nearing the end of construction, the Town doesn't run out of monies and would have to put more money in just in case the Town ran low again. Drew Lyons, of GMB, stated the way GMB did this contract is that it's an estimate of all of GMB's services, and GMB put in a timeframe of what the estimate is, without knowing the contract of when the actual project gets bid, there will be a construction contract. Mr. Lyons further stated in that contract, there can be a timeframe, and a typical engineering contract – if it is a site contract – there is a timeframe listed which has when to perform those duties, so that is something which

can be done and it would be done during the bidding process with AECOM. Mr. Lyons stated GMB estimated about nine (9) months, with twenty (20) hours per week, as an estimate; without seeing that contract, GMB won't be able to get a more accurate number. Mr. Lyons stated this time is listed as an estimated time, so the contract does allow to go over or under in middle of what the Town uses and what is the sole assessment to qualify the Town for that portion. Mr. Maneri asked if, on page five (5), under "Fee Summary," for "Architectural Design" and "Structural Design," the Town is actually talking about thirty-nine-thousand dollars (\$39,000.00) just for the community center to get the architectural and mechanical work done. Ms. Morgan Helfrich, of GMB, stated number one (1), number two (2), and number three (3) on that fee proposal are lump sum services and if you add those together, it's sixty-thousand-eight-hundred-forty dollars (\$60,840.00) for two (2) buildings. Ms. Helfrich stated if you break that down into two halves, it would be about thirty-thousand dollars (\$30,000.00) for each building. Mr. Maneri asked if that was for design, structural, and mechanical. Ms. Helfrich stated yes, and, unfortunately, for construction administration, GMB are not contractors and GMB cannot "hold the contractors' hand" and cannot guarantee when the contractor is going to perform the work when they say they will perform the work, and GMB cannot guarantee weather circumstances. Ms. Helfrich stated without knowing all of that up front, GMB cannot ever do construction administration services as a lump sum fee. Ms. Helfrich further stated if the Town would ask GMB to provide a lump sum fee for that piece now, GMB would unfortunately have to charge the Town a lot more because GMB would need to protect itself because GMB has no way of knowing what that would be. Ms. Helfrich stated GMB's best estimate is what GMB can give the Town for the construction administration based on a timeframe that Mr. Lyons was just explaining for the nine (9) months and what GMB would think it would cost to do the work. Ms. Helfrich stated this is a phased project, which brings a little bit of complication that was not present with the Town Hall addition; however, ultimately, construction administration has to be an estimate, and the addition is that it's part-time work so there is not someone there at the park every day, all day. Ms. Helfrich stated she knows Town Code & Building Official Eric Evans can fill in the gaps where it's needed – and depending on when his schedule will allow – to overlook construction; but this is GMB's best guess estimate and Ms. Helfrich's recommendation is, to save with staffing if there are weather delays and if AECOM has the same situation with permitting that we've had in the past with entrance, etc., to factor in a level of safety for the Town's own services, if the Town wants to continue with GMB regarding construction administration and it goes beyond what GMB has estimated. Ms. Helfrich stated, unfortunately, GMB cannot give the Town a lump sum unless Council wants GMB to raise the price significantly. Mr. Maneri asked if the thirty-thousand dollars (\$30,000.00) would be on top of construction costs. Ms. Helfrich stated yes.

Town Manager Debbie Botchie stated the Town had no idea the new building would take so long to construct as it was supposed to be done on January 6, and now it is May 9, but all of this was out of GMB's control. Ms. Botchie stated she will increase her time monitoring expenses on the Town's end. Ms. Helfrich stated she commends the Town for doing construction administration and she knows the Town Hall expansion project was lengthened more than the Town wanted it to be, but Ms. Helfrich still thinks the Town's level of protection is much higher because of GMB's involvement as well as the Town's involvement,

particularly with the Town's review of pay requisitions. Mr. Thompson asked if the nine (9)-month estimate only applies to construction monitoring. Mr. Lyons stated yes. Mr. Thompson stated under section 4-B, GMB defined "part-time" as essentially averaging twenty (20) hours per week for nine (9) months. Mr. Lyons stated yes. Mr. Thompson stated this results in the sixty-seven-thousand dollar (\$67,000.00) line item, and Mr. Thompson asked if there was a similar analysis in 4-A, talking about the construction administration. Ms. Helfrich stated under 4-A, any time you have architecture and engineering of a building in the State of Delaware, you are required to do construction administration to not only satisfy the State Board of Architects but also to review any shop drawings or RFI requisitions; so, unfortunately, GMB also has to estimate those. Ms. Helfrich further stated what GMB typically does is try to count how many shop drawings and how many site visits GMB would normally go to satisfy not only the State Board but also give the contractor the OK to proceed on specific pieces, such as foundation, framing, and roofing. Ms. Helfrich stated GMB is dividing up twenty-five-thousand dollars (\$25,000.00) into two (2) buildings and to those levels of services. Ms. Helfrich stated GMB will not be on site twenty (20) hours per week, but have estimated about three (3) site visits a piece between the two (2) visits and probably about six (6) to seven (7) shop drawings regarding the level of finish.

Mr. Thompson asked, on page four (4), what "value engineering" means. Ms. Helfrich stated after sixty percent (60%) completion on the design of the two (2) buildings, once Ms. Helfrich meets with the Town Manager and the building committee on the two (2) buildings and they have an improved schematic design – which is more of a thirty percent (30%) level of design – we would proceed. Ms. Helfrich stated architects usually like to work on a thirty percent (30%), sixty percent (60%), ninety percent (90%) submission principle so that GMB meets with the Town at 30%, then 60%, then 90%; and if GMB gets the go-ahead at 60% and they proceed with the construction documentation, GMB would ask the Town not change the building design past 60% because it would require GMB to change almost every single drawing in the set for the final submission. Ms. Helfrich stated it is all a matter of GMB having done its due diligence in presenting the Town with schematic design, the Town has approved the schematic design, GMB has moved on to design development and that was the second level of presentation to the Town. Ms. Helfrich further stated, if, after all of that, there are significant changes, such as changing the entire building design or the building's footprint, that would be a lot of added engineering and architectural design for GMB to accomplish within this fee; so GMB is asking that the building design be approved and not be changed significantly past 60%. Mr. Thompson asked if the value engineering is the engineering required after the changes, after the 60% threshold. Ms. Helfrich stated yes, it's essentially redoing work GMB has already done. Mr. Thompson asked if GMB will not be involved on the Town's behalf in terms of trying to deal with pricing. Ms. Helfrich stated that is already covered by AECOM's current contract they have with the Town. Ms. Helfrich stated GMB has no problem with reviewing the recommendation from AECOM or reviewing any bids to the Town if the Town so chooses for GMB to do so. Mr. Thompson asked if the review would be billed separately. Ms. Helfrich stated yes.

Mr. Thompson stated he likes to highlight the significant general conditions so to highlight a few of those items: if you are more than thirty (30) days late in making the payment on the

invoice, then you're being charged the rate of one percent (1%) per month interest; and if GMB has to refer any delinquent billing to an attorney, the Town will be responsible for paying reasonable attorney's fees to include, without limitation, any litigation expenses and expert witness fees, plus twenty-five percent (25%), which is not a cap but rather a surcharge on top. Mr. Thompson stated GMB invoices external expenses at cost plus ten percent (10%); in terms of liabilities and claims, there is a waiver of liability for anything above either the total fee for the project or GMB's available liability insurance coverage for that year, whichever is less. Mr. Thompson further stated the Town would have to get a certificate of merit from either an architect or engineer licensed in Delaware to say there's been a violation of the standard of care. Mr. Thompson stated if the Town sues GMB and the Town does not "prevail," the Town will pay all legal and other expenses incurred by GMB in its defense, including but not limited to court costs, attorney's fees, expert witness fees. Mr. Thompson stated the instruments of service describe the work product, so the Town is not supposed to take those instruments of service and alter them in any way. Mr. Thompson asked if GMB retains ownership of the design. Ms. Helfrich stated yes, the Town is more than welcome to use the information but the ownership of the design remains with the designer. Mr. Thompson stated, for construction safety, the Town will require the general or subcontractor to indemnify, defend or hold GMB harmless against claims arising from unsafe site conditions. Mr. Thompson stated the Town is agreeing to indemnify and hold GMB harmless for any and all liabilities, claims, costs and expenses related to any hazardous or toxic materials on the project. Mr. Thompson further stated in terms of governing law as well as venue, it would be the state of Maryland, so Delaware law would not apply to this contract and the contract should be interpreted under Maryland law; and if there would be a suit, the case would be tried either wherever GMB decides to bring the case or it's in Wicomico County, Maryland, or the federal courts of Maryland. Council Member Susan Brewer asked why it would be in Maryland and if that's because GMB is located in Maryland. Ms. Helfrich stated yes, but GMB has recently changed that to include Delaware courts as well, so GMB has no problem with changing the location to Delaware if the Town sees fit. Mr. Thompson stated that would be great since Mr. Thompson is not a Maryland attorney; so he advises to change the law to Delaware law and the location to Delaware rather than Maryland.

Ms. Brewer asked if Mr. Evans will have time to fill in outside of the assigned twenty (20) hours. Ms. Botchie stated Mr. Evans won't spend as much time on this park project as he has with the Town Hall addition project. Ms. Brewer stated she understands this is legal and the Town does not have to put this out for bid, but Ms. Brewer would like to know why the Town did not put this job out for bid. Ms. Botchie stated when the Town went to get proposals for the new Town Hall addition, the Town did get three (3) companies and their proposals, and the Town chose GMB due to their references and Ms. Botchie can attest to the fact that she and the staff put a lot of faith into GMB. Ms. Botchie stated the Town would not have gotten to this point with this building without this company; Ms. Botchie trusts GMB, they are honest, they are straight-forward, they keep her and Mr. Evans abreast of every situation that has happened "going down the line." Ms. Botchie stated even on off-hours or weekends, if GMB feels something is not right, GMB lets Ms. Botchie know, and they work for their client. Mr. Maneri stated he thinks the things GMB has caught are things which would have "gone right by us" and Mr. Maneri appreciates everything GMB has done for the Town, as

well as the fact that the billing is reviewed so efficiently by GMB and the Town staff. Mr. Thompson asked if the building committee referenced would be a body appointed by the Town. Ms. Helfrich stated yes. Ms. Botchie stated there is a Parks & Recreation Committee so that would cover it.

Ms. Brewer motioned to approve the proposal from George, Miles & Buhr, LLC (GMB), for the “Architectural & Engineering for New Construction of the Community Center and Maintenance Building as well as Construction Administration for the Town of Millville Community Park,” with the change of Delaware replacing Maryland as the choice of law and location of venue. Council Member Peter Michel seconded the motion. Motion carried 4-0.

B. Discuss and possible vote on Christmas pole lights for Route 26 and lights to go on the Town’s new municipal building.

Ms. Botchie stated she has been here for twelve (12) years and one issue always brought up by Town residents is “why don’t we have Christmas lights like all of the other local towns?” Ms. Botchie stated Delmarva Power & Light (DP&L) had a moratorium on putting lights up due to some separate issues, but the Town was very adamant about getting these lights, and found out in November/December that the moratorium was lifted. Ms. Botchie stated she has been working with Mike Gray, of Christmas Décor, and he has provided some pricing which the Town did not have at budget time due to Mr. Gray had some medical issues. Ms. Botchie stated the decorations for the poles would altogether be thirteen (13) different lights the Town would put up this year on poles. Ms. Botchie stated she got prices on the pole lights as well as the lights to go onto the Town’s new building addition, which totals nineteen-thousand dollars (\$19,000.00), and that includes the bracketing, the purchasing of the lights, putting them up, taking them down, and storing them. Ms. Botchie stated there will be some expense as to the conduit, but Mr. Jim Smith, of DP&L, said he would like to meet with us and Mr. Gray so Mr. Smith’s electrician can explain to Council what has to happen on DP&L’s end. Ms. Botchie stated she would like to ask Council to give her “a little cushion” with the \$19,000 to pay for the lights and electrical receptacles. Mr. Thompson asked if the Town would put up the lights next year. Ms. Botchie stated no, Christmas Décor would provide the Town with another proposal next fiscal year. Ms. Brewer asked if this cost is just for this year. Ms. Botchie stated yes. Mr. Maneri asked if next year, it would only cost about five-thousand dollars (\$5,000.00) or six-thousand dollars (\$6,000.00) to put these lights up because a lot of the costs listed here tonight are just for first-time set-up fees and initial purchasing. Ms. Botchie stated yes, but it would cost even less at about two-thousand-six-hundred dollars (\$2,600.00) to install, take down the lights and decorations, and store them. Mr. Maneri asked if the Town would have to purchase the timers for the lights. Ms. Botchie stated the Town would purchase the timers.

Mr. Maneri asked Council what their feeling is about lighting the back side of the new building. Ms. Brewer stated the lights in the back really would not be seen by anyone and asked if the proposal includes the entire roofline. Mr. Thompson stated yes, because the proposal says the roofline, ridgeline, and fascia of new Town Hall building. Mr. Maneri asked if the Town wants to light an area no one will see. Ms. Botchie stated yes, because when someone is going east or west, you can see it, but it is something Ms. Botchie can speak with

Mr. Gray over the phone to see if she can get the price reduced. Mayor Gordon stated it may not be much of an issue when you look at the total price but it's worth looking into. Ms. Brewer asked if the Town has more than 13 poles. Ms. Botchie stated the Town has twenty-six (26) poles on the north side of Route 26, but the Town would be putting lights on every other pole, therefore, the 13 poles. Ms. Botchie stated the Town has put aside five percent (5%) of transfer tax for economic development for the decorations, and the Town has saved one-hundred-eighty-thousand dollars (\$180,000.00) so far for the decorations. Mr. Maneri stated he definitely wants to see some lights in Town.

Mr. Maneri motioned to approve the expenditure of up to twenty-five-thousand dollars (\$25,000.00) for the purchase of the Christmas lights, including the pole lights and building lights, and the installation of electrical receptacles, from Christmas Décor. Ms. Brewer seconded the motion. Motion carried 4-0.

9. CITIZENS' PRIVILEGE

Mr. Maneri stated, regarding the park property, on May 1, Town Code & Building Official Eric Evans, Council Member Peter Michel, Parks & Recreation Committee member Paul DuCott, and Mr. Maneri cleaned the brush piles out of the park. Mr. Maneri stated, on May 2, Mr. Evans and Mr. Maneri went to AECOM to look at the final plan for the park and the walkway for the park had been made too thick on the plan so that is being changed, and AECOM is work with Sussex County Engineering for the dry pond. Mr. Maneri stated on May 3, Mr. Maneri, Mr. Michel, Mr. DuCott, and Mr. Evans filled a dumpster and cleared out the ditch with the Department of Corrections inmates. Mr. Maneri stated his thanks for Mr. Clarke Droney's machine to clear the ditch so it's clean. Mr. Maneri stated the Delaware Department of Natural Resources and Environmental Control (DNREC) asked the Town to clear ditch and there was an eighty (80)-foot easement there, and DNREC said they would drop it down to twenty-five (25) feet if the Town cleaned it out, so the Town did so. Ms. Botchie stated her thanks to Mr. Droney as well for his loaning his equipment. Mr. Maneri stated the Town saved a lot of money and is ready to go to the next step for designing.

10. ANNOUNCEMENT OF NEXT MEETING – The next meeting will be the Town Council Workshop meeting on May 23, 2017.

11. ADJOURNMENT

Ms. Brewer motioned to adjourn the meeting at 7:54 p.m. Mr. Maneri seconded the motion. Motion carried 4-0.

Respectfully submitted,
Matt Amerling, Town Clerk